

MINUTES OF SEPTEMBER 13, 2021

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 13, 2021, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 6:00 p.m. with Chairman John Williamson presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Williamson.

Motion by Mr. Hastings, seconded by Mr. Warfel and carried unanimously to approve the agenda. Motion carried 5 – 0.

The vote by roll call; Dr. Carson – yea, Mr. Warfel – yea, Mr. Williamson – yea, Mr. Hastings – yea and Mr. Chorman - yea.

Motion by Mr. Chorman, seconded by Dr. Carson and carried unanimously to approve the Minutes for the meeting of June 21, 2021. Motion carried 5– 0.

The vote by roll call; Dr. Carson – yea, Mr. Warfel – yea, Mr. Williamson – yea, Mr. Hastings – yea and Mr. Chorman - yea.

Motion by Mr. Warfel, seconded by Mr. Chorman and carried to approve the Findings of Facts for the meeting of June 21, 2021. Motion carried 5 – 0.

The vote by roll call; Dr. Carson – yea, Mr. Warfel – yea, Mr. Williamson – yea, Mr. Hastings – yea and Mr. Chorman - yea.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

OLD BUSINESS

Case No. 12586 – Timothy Goucher & Mary Alice McNamara seek variances from the front yard setback requirement for a proposed structure (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the east side of Belle Road within the Bayview Park Subdivision. 911 Address: N/A. Zoning District: MR. Tax Parcel: 134-20.11-65.00

Ms. Norwood presented the Application, which had been left open at the Board’s meeting on August 2, 2021, for the limited purpose of allowing the Applicants to submit an updated drawing showing the location of the proposed and related structures by August 31, 2021, and to allow public

comment specific to that drawing. Ms. Norwood noted that, based on the submitted drawing, the request is now a 7.7 ft. variance from the required 30 ft. front yard setback or a 3 ft. variance from the average front yard setback requirement.

Mr. Timothy Goucher was sworn in to give testimony about the submitted drawing.

Mr. Goucher testified that the house will be 2 ft. off the rear yard setback line and that the top level cantilevers out to help with the views.

Mr. Patrick O’Sullivan was sworn in to give testimony in opposition to the Application.

Mr. O’Sullivan testified that the house could be moved farther back and there should not be a variance beyond the average setback line; and that the Applicants have failed to meet the standards for granting a variance

The Board found that no one appeared in support of and one person appeared in opposition to the Application.

Mr. Warfel moved to deny Case No. 12586, pending final written decision, for the requested variance for the following reasons:

1. The property is not unique; and
2. There is no exceptional practical difficulty.

Motion by Mr. Hastings, seconded by Mr. Chorman, carried that the **variance be denied for the reasons stated.** Motion carried 5 – 0.

The vote by roll call; Mr. Warfel – yea, Dr. Carson – yea, Mr. Williamson – yea, Mr. Hastings – yea, and Mr. Chorman - yea.

PUBLIC HEARINGS

Case No. 12601– Care A Lot Child Development Center, LLC seek a special use exception to operate a day care center (Sections 115-72 and 115-210 of the Sussex County Zoning Code). The property is located on the north side of Long Neck Road directly across from Julius Lane. 911 Address: 32479 Long Neck Road, Millsboro. Zoning District: B-1. Tax Parcel: 234-23.00-304.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received eight letters in support of and none in opposition to the Application and one mail return.

Ms. Michelle Blattenberger was sworn in to give testimony about her Application.

Ms. Blattenberger testified that four months ago she was approved for a special use exception to operate a daycare center at 32564 Long Neck Road; that location has opened and is at full capacity; that she would like to open a second location at 32479 Long Neck Road to address the daycare needs of this area; that the site is larger than the site for her other daycare; that the site is near Short's Marine; that this location would serve preschool and school age children; that the other location would be for toddlers; that this use would not substantially adversely affect the uses of neighboring and adjacent properties; that the surrounding area is mostly commercial and there is a letter of support from the residential neighbor; that the entire outdoor play area will be fenced; that, when the children exit the building, they would be within the fenced play area; that there would be five employees and 25 children; that the hours of operation would be from 6:00 am – 6:00 pm Monday through Friday; that there is adequate parking on the property; and that the property is served by public sewer and water.

The Board found that no one appeared in support of or in opposition to the Application.

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12601, pending final written decision, for the requested special use exception for a daycare business as the request will not substantially adversely affect the uses of neighboring and adjacent properties.

Motion by Dr. Carson, seconded by Mr. Hastings, carried unanimously that the **special use exception be granted for the reasons stated.** Motion carried 5 – 0.

The vote by roll call; Mr. Warfel – yea, Dr. Carson – yea, Mr. Williamson – yea, Mr. Hastings – yea and Mr. Chorman - yea

Case No. 12602 – Patrick Tell seeks variances from the front yard, side yard and corner front yard setback requirements for existing structures (Sections 115-82, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the east side of River Road at the intersection of River Road and Oak Orchard Road. 911 Address: 32742 River Road, Millsboro. Zoning District: C-1. Tax Parcel: 234-34.12-77.00

Ms. Norwood presented Case No. 12602 and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application for Case No. 12602 and zero mail returns. The Applicant is requesting the following variances:

- 37.3 ft. from the 40 ft. front yard setback for an existing shed.
- 14.2 ft. from the 15 ft. corner front yard setback for an existing shed.
- 8.5 ft. from the 15 ft. corner front yard setback for an existing shed.
- 12.5 ft. from the 15 ft. corner front yard setback for an existing porch.
- 11 ft. from the 15 ft. corner front yard setback for an existing dwelling.

- 0.1 ft. from the 5 ft. side yard setback on the southwest side for an existing cottage.
- 0.5 ft. from the 5 ft. side yard setback on the southwest side for an existing cottage.
- 1.8 ft. from the 15 ft. side yard setback on the northeast side for an existing dwelling
- 8.1 ft. from the 40 ft. front yard setback for an existing cottage.

Ms. Norwood noted that all structures are non-conforming and the Applicant is seeking to raise the dwelling.

At the request of the Applicant, the Board of Adjustment agreed to consolidate the next two items Case No. 12602 and Case No. 12603 into one public hearing. Mr. Sharp explained that, although the two applications will be heard together that there would be two votes, one for each application.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried unanimously that the two applications be heard under one hearing. Motion carried 5 – 0.

The vote by roll call; Mr. Warfel – yea, Dr. Carson – yea, Mr. Williamson – yea, Mr. Hastings – yea and Mr. Chorman - yea

Case No. 12603 – Patrick Tell seeks variances from the front yard, side yard and corner front yard setback requirements for existing structures (Sections 115-82, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the east side of Oak Orchard Road at the intersection of River Road and Oak Orchard Road. 911 Address: 32746 Oak Orchard Road, Millsboro. Zoning District: C-1. Tax Parcel: 234-34.12-78.00

Ms. Norwood presented Case No. 12603 and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application for Case No. 12603 and zero mail returns. The Applicant is requesting the following variances:

- 16.2 ft. from the 30 ft. front yard setback for an existing shed.
- 2.7 ft. from the 15 ft. corner front yard setback for an existing shed.
- 5.8 ft. from the 30 ft. front yard setback for an existing dwelling.
- 2.5 ft. from the 5 ft. side yard setback on the northeast side for an existing dwelling.
- 3.2 ft. from the 15 ft. corner front yard setback for an existing porch.

Mr. Patrick Tell was sworn in to give testimony about his Applications.

Mr. Tell testified that that these properties are historic; that the buildings are over 100 years old; that both properties have flooding issues; that the property for Case No. 12603 has flooded 12 times in the past decade; that, if the houses are not raised, they will fall down; that the requests will not add to the non-conformity as the Applicant intends to raise the existing dwellings in their current

locations; that portions of the houses are rotting and need replacement; that he owns other properties nearby; that the dwellings will be 8 ft. below the maximum height requirement; that the sheds will remain in their current locations; that only the houses are being raised; that the cottage does not need to be raised; that the houses are below ground level; that there is an outhouse on the property for Case No. 12602 and he is not sure if the outhouse will be removed and he requests a variance for the outhouse; that the steps for the dwellings at both properties will comply with code; that the steps for Case No. 12602 will be off the front porch; that the steps for Case No. 12603 will be off the bay side and will be within the building envelope; that all the structures were existing when the properties were purchased by the Applicant; and that most of the structures have been on the properties since the early 1900s.

The Board found that no one appeared in support of or in opposition to the Applications.

Mr. Williamson closed the public hearings.

Mr. Hastings moved to approve Case No. 12602 for the requested variances for the following reasons:

1. The property has unique conditions; and
2. The exceptional practical difficulty was not created by the Applicant.

Motion by Mr. Hastings, seconded by Mr. Chorman, carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, Dr. Carson – yea, Mr. Hastings – yea and Mr. Chorman - yea.

Mr. Hastings moved to approve Case No. 12603 for the requested variances for the following reasons:

1. The property has unique conditions;
2. The exceptional practical difficulty was not created by the Applicant.

Motion by Mr. Hastings, seconded by Mr. Chorman, carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, Dr. Carson – yea, Mr. Hastings – yea and Mr. Chorman - yea.

Case No. 12604 – Edward Olson seeks a special use exception for a garage/studio apartment and a variance from the maximum square footage for a garage/studio apartment for an existing structure (Sections 115-23, 115-25, & 115-210 of the Sussex County Zoning Code). The property is located on

the west side of Hopkins Road directly across from Park Pavillion Way. 911 Address: 20396 Hopkins Road, Lewes. Zoning District: AR-1. Tax Parcel: 234-5.00-46.03

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a special use exception for a garage studio apartment and a 49 sf. variance from the maximum square footage requirement of 800 sf. for a garage studio apartment.

Mr. Edward Olson was sworn in to give testimony about his Application.

Mr. Olson testified that he purchased the property in 2011; that the structure was existing at that time and was used as a garage; that the garage was less than 800 square feet; that he wanted to convert the garage to an apartment for his elderly mother with dementia; that his mother later passed away; that the renovation was completed with updated windows and mechanical equipment; that there is no basement or attic for the mechanical equipment for the garage; that an addition was built to accommodate the mechanical equipment and this created the need for a variance because it enlarged the area of the garage / studio apartment; that the work was finished in September 2020; that a certificate of occupancy was issued for the building; that his daughter had a child in March 2021 and visits from Connecticut; that this garage / studio apartment will be a rental unit for additional retirement income; that the property is secluded and consists of 1.5 acres; that there is a dedicated parking space for the resident of the apartment; that the garage is not close to neighboring dwellings; that the septic can accommodate four bedrooms; that there are three bedrooms in the main house and one in the apartment; that the apartment is only one story tall but has a 16 foot tall ceiling so it appears from the outside as a two-story structure; and that a kitchen has been installed in the apartment.

Ms. Norwood noted that there was previous Board of Adjustment approval for a variance for the additional square footage and for the special use exception but, due to the lapse of time, these approvals expired and created the need for the Applicant to submit a new application.

The Board found that no one appeared in support of or in opposition to the Application.

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12604 for the special use exception and the requested variance for the following reason:

1. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property.

Motion by Mr. Hastings, seconded by Dr. Carson, carried unanimously that the **special use exception and the variance be granted for the reason stated.** Motion carried 5 – 0.

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, Dr. Carson – yea, Mr. Hastings – yea and Mr. Chorman - yea.

Case No. 12605 – ZCorp Property Consultants, LLC seek variances from the side yard setback requirement for existing structures (Sections 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the north side of W. Piney Grove Road approximately 966 ft. west of Shortly Road. 911 Address: 20499 West Piney Grove Road, Georgetown. Zoning District: AR-1. Tax Parcel: 133-5.00-33.06

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a 1.3 ft variance from the 15 ft. side yard setback requirement on the east side for an existing dwelling and a 7.7 ft. variance from the 15 ft. side yard setback requirement on the east side for an existing pole building. Ms. Norwood noted that a temporary certificate of occupancy was issued for the dwelling in August of this year.

Mr. Dan Conway was present on behalf of the Applicant, ZCorp Property Consultants, LLC.

Mr. Conway stated that two variances are being sought for the existing dwelling and pole building; that the smaller shed shown in the rear of the property on the survey will be removed so the west side of the property will comply with setbacks; that the storage box shown as attached to the pole building will also be removed; that the pole building was existing when the property was purchased by the Applicant; that the foundation for the house was set and the house was permitted; that, when the setback measurement was taken for the foundation the angle of the property was not considered and that created the need for a variance.

Mr. Barry Ziegler was sworn in to give testimony about the Application.

Mr. Ziegler affirmed statements made by Mr. Conway as true and correct.

Mr. Ziegler testified that a new septic system was installed in the front of the house and a well was installed in the rear between the house and the pole building; that there is a tax ditch to the rear of the property; that there have been no complaints about the location of the structures; that neighbors do not object to the request; that the property is flat; that the property has now been sold; that the new owners plan to remove the rear shed; that the house was staked by Cotten Engineering; that the property lines were adjusted which created the non-compliance of the pole building; that he used to own the property to the west and there was a driveway issue that led to the lot line adjustment; and that the pole building is approximately 40 years old.

The Board found that no one appeared in support of or in opposition to the Application.

Mr. Williamson closed the public hearing.

Mr. Warfel moved to approve Case No. 12605 for the requested variances for the following reasons with the condition that the building in the rear of the property be removed:

1. The property has unique conditions due to the unusual shape and narrowness;
2. That, due to the physical conditions, the property cannot be developed in strict conformity;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Warfel, seconded by Mr. Chorman, carried unanimously that the **variances be granted for the reasons with conditions stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, Dr. Carson – yea, Mr. Hastings – yea and Mr. Chorman - yea.

Case No. 12606 – Michael Wright seeks variances from the front yard setback and maximum fence height requirement requirements for proposed structures (Sections 115-25, 115-182 and 115-185 of the Sussex County Zoning Code). The property is located on the northeast side of Teaberry Circle within the Teaberry Woods Subdivision. 911 Address: 37744 Teaberry Circle, Selbyville. Zoning District: AR-2. Tax Parcel: 533-19.00-607.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received eight letters in support of and none in opposition to the Application and zero mail returns. The Applicant is requesting a 28 ft. variance from the 40 ft. front yard setback requirement off Route 54 for a proposed shed on a through lot and a 2.5 ft. from the 3.5 ft. maximum fence height requirement in the front yard setback for approximately 310 ft. of fencing.

Mr. Michael Wright was sworn in to give testimony about his Application.

Mr. Wright testified that the property is unique; that, when he purchased the property, he was unaware that it had two front yards and he was told that he could have a shed; that Route 54 is a busy road; that he proposes to install a 6 ft. tall fence for privacy and safety reasons; that he has three grandchildren; that this proposal is consistent with other sheds and fences in the neighborhood; that he has support from neighbors; that the fence will not create any visibility issues as it will be placed behind the subdivision sign which is on his property; that there is no homeowners association for this development; that the shed will measure 10 feet by 10 feet; that there is a telephone pole, guy wires, and a stormwater basin on his lot; that the fence will be located within the area where a community sign also exists; that the fence will not affect visibility; that there are pedestrians on Route 54; that they are considering getting a dog; that he plans to put a pool on the lot as well; that this is the only area to put the shed as there is a gas tank in on the east side of the property; that the silt fence shown on the photograph is 3 feet closer to the house than the proposed fence; that the fence will be 7 ft.

from the property line and the shed will be 12 ft. from the property line.

Ms. Cheryl Wright was sworn in to give testimony in support of the Application.

Ms. Wright testified that they are proposing to install a pool in the future and they will need a privacy fence installed for the safety of children and grandchildren; that the shed is necessary for children's toys and a lawnmower; that the lot is a unique through lot which they did not understand when they purchased the property; and that the fence will be far from the road.

The Board found that one person appeared in support of and no one appeared in opposition to the Application.

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12606 for the requested variances for the following reasons:

1. The property has unique conditions due to it being a through lot;
2. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property.
3. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Chorman, seconded by Mr. Warfel, carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, Dr. Carson – yea, Mr. Hastings – yea and Mr. Chorman - yea.

ADDITIONAL BUSINESS

Ms. Norwood stated that the meeting of October 4, 2021 has been canceled.

Dr. Carson stated that he will not be present at the meeting of September 20, 2021.

Meeting adjourned at 7:22 p.m.